



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,122	05/04/2001	Donald E. Ackley	264/037	1952

34263 7590 02/14/2003

O'MELVENY & MEYERS
114 PACIFICA, SUITE 100
IRVINE, CA 92618

EXAMINER

MARSCHER, ARDIN H

ART UNIT	PAPER NUMBER
----------	--------------

1631

DATE MAILED: 02/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/849,122

Applicant(s)

ACKLEY ET AL.

Examiner

Ardin Marschel

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 1631

DETAILED ACTION

If applicant desires priority under 35 U.S.C. §120 based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. It is noted that this appears as the second paragraph of the specification following the title. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. _____" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

If the application is a utility or plant application filed on or after November 29, 2000, any claim for priority must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2) and (a)(5). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) a surcharge under 37 CFR 1.17(t), and (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Commissioner may require additional information

Art Unit: 1631

where there is a question whether the delay was unintentional. The petition should be directed to the Office of Petitions, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231.

Claim Rejections - 35 USC § 112

Claims 1-14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-14 and 17 are vague and indefinite in that the preamble of claim 1 cites the practice of output current control as the intended circuit usage or practice. Consideration of the actual claim circuit limitations in all of claims 1-14 and 17 has failed to reveal any element which controls output current in a clear and concise way. Clarification as to whether the preamble or the actual claimed circuit element limitations control the metes and bounds of the instant claims, via clearer claim wording is requested.

Claim 2, lines 1-2, cite the phrase "in an active biological control reaction system" which causes this claim to be vague and indefinite as to what the system metes and bounds are meant thereby. For example, is the system itself only an output generating system in which a circuit is present which may analyze and control a biological reaction but itself lacks any biological elements? It is noted that the instant claims lack any biological element recitation per se but rather only transistors, supplies, etc. Must the system of claim 2 include biological entities per se or not? Clarification via clearer claim

Art Unit: 1631

wording is requested. This unclarity is also in other claims which cite biological control reaction systems such as claims 3 etc.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-3, 7-10, 12, and 13 are rejected under 35 U.S.C. 102(b) and (e)(2) as being clearly anticipated either by Wei et al. (P/N 4,672,412).

Wei et al. discloses imaging arrays which thus cite row and columns of multiple unit imaging cells as required in the instant claims in the abstract, Figures 5 and 6 showing such arrays and electronics with many interconnecting nodes, respectively, and in the section entitled "DETAILED DESCRIPTION" starting in column 5. Row and column selection is clearly shown in figure 6 along with associated description. It is noted that the instant claims are unclear as to their metes and bounds and thus the row/column selection array circuits of Wei et al. apparently anticipate the instant claims

regarding biological control reaction system even though they also do not cite biological elements pre se. Return electrodes or common column electrodes are cited in column 8, lines 25-35, as also required in the instant claims. Gating transistors for row and column addressing or selection are cited in column 8, line 36, through column 9, line 4, with current control therein via electron and hole accumulation and movement. Such gating transistors are depicted in Figure 6 utilizing the field effect transistor type symbol which is well known.

Claims 1-3, 7-10, 12, and 13 are rejected under 35 U.S.C. 102(e)(2) as being clearly anticipated by Zhao et al.(P/N 5,962,856).

Equivalent to the above reference, Zhao et al. disclose a imaging array with row and column field effect transistor selection etc. as shown in the Figures and summarized in the abstract. The "DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT" section starting in column 4 details the sensing electrodes, circuitry, etc.

No claim is allowed.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703)308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703)308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

Application/Control Number: 09/849,122

Page 6

Art Unit: 1631

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703)308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (703)305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

February 14, 2003

Ardin H. Marschel
ARDIN H. MARSCHEL
PRIMARY EXAMINER